

SEP 13 2006

**EMPLOYER STATUS DETERMINATION**  
**Messiah Locomotive Service**

This is the decision of the Railroad Retirement Board with regard to the coverage of Messiah Locomotive Service (MLS) under the Railroad Retirement Act (45 U.S.C. §231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA).

According to information supplied by Mr. Jeremiah D. Erickson, owner and Chief Executive Officer of MLS, MLS began operations in 1999 as a sole proprietorship. Mr. Erickson indicated that although not yet incorporated, he plans to incorporate MLS in the near future. According to Mr. Erickson, MLS' relationship with the railroad industry is mobile contract locomotive repair. A substantial portion of the repair work performed by MLS is on equipment owned or leased by Rail America Service Corporation (BA No. 9409), R. J. Corman Railroad Company (BA No. 5589), Watco Transportation Services, Inc. (BA No. 9848), Nebkota Railway, Inc. (BA No. 2769), Colt Railroad, Nebraska Northeastern Railway Company (BA No. 2780), Canadian American Railroad Company (BA No. 2127), Central Grain and Barge Company, San Luis and Rio Grande Railroad (BA No. 3796), and Vaer-Tech Company. Mr. Erickson stated that locomotive repair services performed for these railroads represents approximately 75% of the total business time of MLS. MLS owns all equipment used to perform the locomotive repairs, according to Mr. Erickson. Mr. Erickson stated that MLS has no employees at the present time, but plans to hire employees in the very near future.

Section 1(a)(1) of the Railroad Retirement Act (RRA) (45 U.S.C. 231(a)(1)), insofar as relevant here, defines a covered employer as:

(i) any carrier by railroad subject to the jurisdiction of the Surface Transportation Board under part A of subtitle IV of title 49, United States Code;

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad \* \* \*.

Sections 1(a) and 1(b) of the Railroad Unemployment Insurance Act (RUIA), 45 U.S.C. 351(a) and (b), contain substantially similar definitions, as does section 3231 of the Railroad Retirement Tax Act (RTTA), 26 U.S.C. 3231.

MLS is clearly not a carrier by rail. However, there is no doubt that the service being performed by MLS for the various railroads is a service in connection with railroad transportation. See Livingston Rebuild Center. v. Railroad Retirement Board, 970 F. 2d 295 (7<sup>th</sup> Cir. 1992). The determination of whether MLS is covered as a rail carrier affiliate thus depends on whether it is owned by or under common control with a rail carrier. Mr. Erickson is the sole owner of MLS. There is no evidence to show that MLS is owned or controlled by a rail carrier or under common control with a rail carrier employer. MLS is not under common control with any of the rail carriers for whom it performs mechanical repair services. Therefore, despite the fact that it clearly performs a service in connection with railroad transportation, MLS does not meet the definition of a covered employer under the Acts.

For the reasons explained above, the Board finds that MLS is not an employer subject to the Acts administered by the Board.

Original signed by:

Michael S. Schwartz

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